FILED ENTERED
LODGED RECEIVED

FEB 24 2017

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

Magistrate Judge John L. Weinberg

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. GARY TODD HORTON, Defendant.	CASE NO. MJ17-060 COMPLAINT for VIOLATION 21 U.S.C. §§ 953, 960

BEFORE United States Magistrate Judge John L. Weinberg, Seattle, Washington.

The undersigned complainant, being duly sworn, states:

Count One
(Conspiracy to Export Cocaine)

Beginning at a date unknown but not later than on or about December 15, 2016, and continuing until on or about February 23, 2017, in San Juan County, within the Western District of Washington, and elsewhere, the Defendant, GARY TODD HORTON, knowingly and intentionally conspired with persons known and unknown, to export from the United States to Canada an unknown controlled substance, believed at this time to be a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance.

All in violation of Title 21, United States Code, Sections 953 and 960.

//

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

I, Steven M. Ausfeldt, being first duly sworn on oath, depose and say:

AFFIANT BACKGROUND AND EXPERIENCE

1. I am a Special Agent with United States Department of Homeland Security, Homeland Security Investigations (HSI), assigned to the field office in Blaine, Washington, and have served in that capacity since July 2009. Prior to becoming an HSI Special Agent, I served as a Border Patrol Agent with U.S. Customs and Border Protection, Office of Border Patrol for two years.

2. As an HSI Special Agent, I have received extensive training in the investigation of violations of federal criminal law, including the Money Laundering and Control Act, the Racketeer Influenced and Corrupt Organizations Act (Title 18, United States Code), the U.S. Customs Code (Title 19, United States Code), and the Controlled Substances Act (Title 21, United States Code). I have also personally participated in numerous investigations concerning the illegal import, export, and distribution of controlled substances into and throughout the United States, and the use, concealment, and export of the proceeds of narcotic trafficking activities.

3. I make this affidavit, in part, based on personal knowledge derived from my participation in this investigation and, in part, based upon information gained from, but not limited to, the following sources: (a) investigation and physical surveillance conducted by other law enforcement personnel, whose findings and observations have been reported to me either directly or indirectly; (b) statements of confidential sources; (c) business and public records; and (d) law enforcement database inquiries. Furthermore, where I have expressed opinions and conclusions below, those opinions and conclusions are based on my training and experience as a law enforcement officer.

4. Because this affidavit is offered for the limited purpose of establishing probable cause that GARY TODD HORTON committed the offense as alleged above, it does not contain all of the information that the government possesses relative to this investigation. Dates and times provided herein are approximate.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

PROBABLE CAUSE

A. December 15, 2016 Incident

5. On December 15, 2016, HSI agents were notified by the Royal Canadian Mounted Police (RCMP) of a potential maritime narcotics smuggling incident involving William Milton BARNES. BARNES is a Canadian citizen residing in British Columbia. According to RCMP, BARNES owns a maritime-related business at 89 Dallas Rd. Victoria, British Columbia named "Mercury Sales and Service" (hereinafter MERCURY). RCMP surveillance has observed multiple vessels at MERCURY registered to BARNES. MERCURY is located adjacent to the Strait of Juan de Fuca, the waterway which separates the Olympic Peninsula in the U.S. from Vancouver Island in Canada. The east end of the Strait of Juan de Fuca joins the greater Salish Sea region, which includes the San Juan Islands and Puget Sound.

6. According to RCMP, at approximately 0842 hours on December 15, 2016, maritime radar indicated that a vessel travelling westbound crossed the United States-Canada international boundary at a high rate of speed, heading towards Victoria, British Columbia. Radar tracking confirmed that this vessel reached a speed of approximately forty-five knots on the approach to Victoria. In my training and experience, a travel speed of forty-five knots is not consistent with typical recreational boating activity in the region.

7. Due to the suspicious nature of the border crossing and the approximate vector of travel, RCMP began observing BARNES's business at MERCURY. At approximately 0847 hours, RCMP observed BARNES offload at least five large waterproof dry bags from his vessel into MERCURY. It took BARNES three trips to the vessel to offload the dry bags. The dry bags appeared to be heavy and their shape was consistent with bags containing kilogram bricks of narcotics.

8. RCMP subsequently reviewed historical radar data from earlier that morning and noted that a vessel (hereinafter VESSEL 1) departed Victoria, BC in the vicinity of MERCURY at approximately 0705 hours. The radar track indicated that

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

VESSEL 1 headed eastbound toward U.S. territorial waters at approximately twenty-eight knots. Based on the radar track, RCMP believes that VESSEL 1 was operated by BARNES.

9. According to the radar track, as VESSEL 1 entered the U.S. waters via Haro Strait, it slowed to approximately twenty knots and continued heading eastbound.

10. At approximately 0800 hours, the radar track indicated that VESSEL 1 increased speed toward an unknown vessel (hereinafter VESSEL 2). The radar track for VESSEL 2 indicated that it originated from the vicinity of Anacortes, Washington or Deception Pass, Oak Harbor, Washington.

11. According to the radar track, VESSEL 1 and VESSEL 2 met in United States waters at 0813 hours. RCMP indicated that this location was approximately four and a half nautical miles south south-east of Cattle Point on San Juan Island, Washington and approximately seven nautical miles east of the international boundary in Haro Strait.

12. VESSEL 1 and VESSEL 2 met for approximately five minutes, departing at 0818 hours. Following this brief meeting, VESSEL 1 returned to Victoria as described above, where BARNES was observed unloading a boat that is believed to be VESSEL 1. VESSEL 2 returned toward its point of origin on the radar, but the RCMP was unable to track VESSEL 2 to its final destination.

13. In my training and experience, the activity noted in the preceding paragraphs is indicative of narcotics smuggling. The very short meeting between VESSEL 1 and VESSEL 2, and the high rate at which VESSEL 1 departed United States waters, are suspicious and inconsistent with recreational or fishing activity. Furthermore, BARNES's offloading of five waterproof dry bags after a cross-border meeting is highly suspicious. Dry bags are commonly used to transfer narcotics in a maritime environment in order to protect the product from the elements. In addition, it is unusual for a recreational boater to have five dry bags while operating a vessel alone. According to RCMP, BARNES did not check into Canadian customs after returning from United

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

States waters, as is required by Canadian law. This failure to clear customs is also suspicious.

B. February 23, 2017 Incident

14. On February 23, 2017, at approximately 1200 hours HSI was notified by U.S. Customs and Border Protection (CBP) Air and Marine Operations that BARNES was piloting a vessel in a south-easterly direction toward the United States-Canada international boundary.

15. CBP marine agents subsequently responded to the area in which BARNES was suspected of conducting previous smuggling operations.

16. At approximately 1332 hours, BARNES had returned to the dock at MERCURY and was observed removing dry bags from his vessel. Immediately thereafter, RCMP attempted to apprehend BARNES and BARNES fled on foot.

17. At approximately 1341 hours, CBP marine agents intercepted a vessel that was following a trajectory consistent with having departed from BARNES' last known radar location. There were no other vessels in the area coming from the known meet location. CBP marine agents conducted a vessel customs check, pursuant to Title 19 United States Code, Section 1581. The location of the stop was southeast of Lopez Island, Washington. The vessel stopped bears registration number WN8004NL, which is registered to GARY TODD HORTON, a United States Citizen. HORTON was the operator and sole occupant of the vessel at the time of the stop.

18. According to CBP marine agents, during the vessel check, HORTON made inconsistent statements regarding his activity on the water. Furthermore, HORTON stated that he may have entered Canadian waters. Due to the aforementioned information; to include the knowledge of BARNES' arrest by RCMP with dry bags, and the vector of HORTON's travel being consistent with that of a vessel which had met up with BARNES, CBP marine agents subsequently escorted HORTON's vessel to a marina in Cornet Bay in Oak Harbor, Washington for further investigation.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

19. HSI responded to Cornet Bay and contacted HORTON. HORTON subsequently signed consent to search forms for his vessel, truck, and cell phones.

20. An Anacortes Police Department K-9 unit responded to assist with the investigation. The trained narcotics detection dog conducted an examination of HORTON's vessel and registered an alert to the odor of narcotics in the mid-ship deck box and forward cuddy cabin. The K-9 also registered an alert to the odor of narcotics in HORTON's truck. An examination of the vessel and the truck did not yield any narcotics. However, I know from my training and experience, that a dog may detect the odor of narcotics in a particular location if narcotics were recently present there.

21. Furthermore, HSI Agents discovered a receipt from Cabela's dated December 13, 2016—two days before the December 15, 2016, incident involving BARNES described above. This receipt indicated that HORTON had purchased three dry bags from Cabela's.

22. HSI agents discovered that HORTON had two cell phones in his possession. I know through my training and experience that drug traffickers will often carry more than one cell phone, in order to compartmentalize their legitimate and illegitimate communications, and avoid detection by law enforcement. One of HORTON's cell phones is a PGP (also known as "Pretty Good Protection") Blackberry cell phone. PGP is an encryption program that can be used to encode text communication between cellular telephones. Through my training and experience, I know that PGP encryption is often used by narcotics smugglers to conceal their communications from law enforcement.

23. The consent search of HORTON's Blackberry revealed several text messages. One text message, sent from "Cowboy" (later determined to be HORTON) to "Patriots" at 1307 hours on February 23, 2017, read "Ok all done fuck what a day." Radar information obtained from RCMP indicates that BARNES and HORTON met in United States waters at 1305 hours.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

24. Concurrent to the investigative activities conducted by HSI above, RCMP arrested BARNES in Victoria for suspected importation of cocaine. According to RCMP, they seized from BARNES at least seven dry bags which are believed to contain multiple kilograms of suspected cocaine. HSI also received the following information from RCMP regarding radar tracking of BARNES on February 23, 2017:

25. At approximately 1212 hours, RCMP observed BARNES departing in a boat from his dock at MERCURY. RCMP was also able to observe BARNES' radar signature at 1212 hours off Ogden Point, near Victoria, British Columbia.

26. RCMP tracked BARNES' radar signature as it approached the international boundary at a high speed (30-34 knots). As BARNES approached the border, he varied his speed and heading. According to an RCMP radar analyst, this behavior is not consistent with fishing activity. At approximately 1242 hours, BARNES' vessel crossed into U.S. territorial waters.

27. At approximately 1248 hours, RCMP observed a vessel travelling westbound which originated from U.S. waters approach BARNES' vessel, slowly closing the distance between their vessels over the next fifteen minutes. At 1304 hours, BARNES and the U.S. vessel rapidly closed distance, meeting side by side at a 1.64 nautical miles inside U.S. waters. The vessels subsequently separated and BARNES reentered Canadian waters at approximately 1312 hours.

28. According to RCMP, the U.S. vessel departed eastbound along the south side of San Juan Island, Washington. RCMP performed an analysis based on the speed and heading of the U.S. vessel and predicted its likely future location. This location is consistent with the location of the CBP marine intercept at 1341 hours of HORTON's vessel.

29. Based on all the circumstances described above, HSI agents arrested HORTON for federal narcotics violations. HORTON was subsequently transported to the Anacortes Police Department. After waiving his *Miranda* rights, HORTON admitted to transporting narcotics on at least four occasions, to include February 23, 2017 and in

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

December, 2016. HORTON stated that he was getting paid $50,000 for his role in the February 23, 2017, smuggling attempt. HORTON stated that he had been paid between $10,000 and $30,000 for his previous successful smuggling of narcotics.

30. Furthermore, HORTON identified a photograph of BARNES as the individual who he transferred the narcotics to on February 23, 2017. HORTON stated that he knew BARNES as "Trent" or "Trey." In addition, HORTON identified BARNES's vessel as the same vessel that he transferred the narcotics to. HORTON further stated that all his previous narcotics smuggling events have involved transferring narcotics to BARNES on waters near the international boundary.

CONCLUSION

31. Based on the foregoing, I respectfully submit there is probable cause to believe that GARY TODD HORTON, did knowingly and intentionally conspire to export a controlled substance, likely cocaine, from the United States into Canada, in violation of 21 U.S.C. §§ 953 and 960.

STEVEN M. AUSFELDT, Complainant
Special Agent
Homeland Security Investigations

Based on the Complaint and Affidavit sworn to before me, and subscribed in my presence, the Court hereby finds that there is probable cause to believe the Defendant committed the offense set forth in the Complaint.

Dated this 24 day of February, 2017.

JOHN L. WEINBERG
United States Magistrate Judge

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970